



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 29 2018

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sunny Farms Landfill, LLC
c/o CT Corporation System
4400 Easton Commons Way Suite 125
Columbus, Ohio 43219

To Whom It May Concern:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Sunny Farms Landfill, LLC at 12500 West County Road 18, Fostoria, Ohio (you) under Section 113(a)(1) and (3) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(1) and (3). We find that you are violating the Ohio State Implementation Plan (SIP) and Title V of the Act, 42 U.S.C. § 7661 *et seq.*, and its implementing regulations, at your Fostoria, Ohio facility.

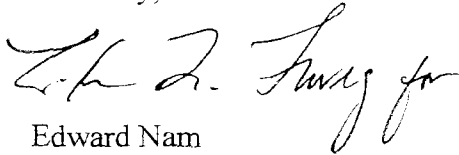
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Daniel Schaufelberger. You may call him at (312) 886-6814 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed. Nam", followed by a flourish.

Edward Nam
Director
Air and Radiation Division

Enclosure

cc: Bob Hodanbosi, Ohio Environmental Protection Agency
Shane A. Farolino, Esq., Roetzel & Andress

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Sunny Farms Landfill, LLC
Fostoria, Ohio**

Proceedings Pursuant to
Section 113(a)(1) and (3) of the
Clean Air Act, 42 U.S.C.
§§ 7413(a)(1) and (3)

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) **NOTICE AND FINDING OF**
) **VIOLATION**
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) **EPA-5-18-OH-09**
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NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation (NOV/FOV) to Sunny Farms Landfill, LLC (Sunny Farms or you) to notify you that we have found violations of the Clean Air Act (the Act), 42 U.S.C. §§ 7401-7671q, and its implementing regulations at your facility located at 12500 West County Road 18, Fostoria, Ohio. The relevant statutory and regulatory background, factual background, finding of violations, and environmental impact of these violations are set forth in detail below.

This NOV/FOV is issued in accordance with Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3). The authority to issue this NOV/FOV has been delegated by the Administrator to the Regional Administrator and re-delegated to the Director of the Air and Radiation Division for Region 5 of the EPA.

Statutory and Regulatory Background

1. The Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its populations. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

Prevention of Significant Deterioration of Air Quality

2. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (PSD) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (NAAQS). These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. *See* 42 U.S.C. § 7470. These provisions are referred to as the Clean Air Act's "PSD Program."

3. Part C of Title I of the Act and the regulations implementing Part C, at 40 C.F.R. § 52.21, prohibit construction of a major stationary source without first obtaining a PSD permit, if the source is located in an area which has attained the NAAQS for that pollutant. Part C and its implementing regulations further require that a source subject to PSD regulations install best available control technology (BACT).
4. Sections 110(a) and 161 of the Act, 42 U.S.C. 7410(a) and 7471, require states to adopt a State Implementation Plan (SIP) that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
5. On October 10, 2001, EPA conditionally approved revisions to the Ohio SIP to incorporate Ohio's PSD Program, effective October 10, 2001. 66 Fed. Reg. 51570 (October 10, 2001). On January 22, 2003, EPA granted final approval for Ohio's PSD Program, effective March 10, 2003. 68 Fed. Reg. 2909 (January 22, 2003). On February 25, 2010, EPA partially approved revisions to Ohio's PSD Program, effective March 29, 2010. 75 Fed. Reg. 8496 (February 25, 2010). On February 20, 2013, EPA partially approved revisions to Ohio's PSD Program, effective March 22, 2013. 78 Fed. Reg. 11748 (February 20, 2013). Ohio's PSD Program is codified at Ohio Administrative Code (OAC) Rules 3745-31 *et seq.*
6. OAC Rule 3745-31-01(S) of the federally-approved Ohio SIP defines "Best available control technology" or "BACT" to mean an emission limitation based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source which the director, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such major stationary source through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant.
7. OAC Rule 3745-31-01(NNNN)(2) of the federally-approved Ohio SIP provides that, for stationary sources located in an attainment area, "regulated NSR pollutant" includes, among other things, any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants.
8. OAC Rule 3745-31-01(NNN)(2)(b) of the federally-approved Ohio SIP provides that "[f]or stationary sources located in an attainment area for a given regulated air pollutant", a "major stationary source" is considered to be "any stationary source that emits, or has the potential to emit, two hundred fifty tons per year or more of any regulated [new source review] NSR pollutant."
9. OAC Rule 3745-31-01(NNN)(5) of the federally-approved Ohio SIP provides that "[a]ny physical change that would occur at a stationary source not qualifying under paragraph (NNN) of this rule as a major stationary source would be considered a major stationary source, if the change would constitute a major stationary source by itself."

10. OAC Rule 3745-31-13(A) of the federally-approved Ohio SIP provides that no major stationary source or major modification shall begin actual construction unless, at a minimum, the requirements of OAC Rules 3745-31-01 through 3745-31-20 have been met and the stationary source has obtained a valid permit to install from the Ohio Environmental Protection Agency (OEPA).
11. OAC Rule 3745-31-12(C)(4) of the federally-approved Ohio SIP requires that a major stationary source that is to be constructed in an area designated as attainment for an air pollutant for which the major stationary source is major submit the air quality impact(s) of the major stationary source to OEPA.
12. OAC Rule 3745-31-15(C) of the federally-approved Ohio SIP provides “[t]hat the owner or operator of a new major stationary source shall apply BACT to the major stationary source for each regulated NSR pollutant that the major stationary source would have the potential to emit in significant amounts.”
13. OAC Rule 3745-31-05(D)(5) of the federally-approved Ohio SIP provides that at such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable term and condition or limitation established after August 7, 1980, on the capacity of the stationary source or modification otherwise to emit an air pollutant, the requirements of rules 3745-31-10 to 3745-31-27 and 3745-31-30 to 3745-31-32 of the Administrative Code shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

Title V

14. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.
15. In accordance with Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. See 57 Fed. Reg. 32250 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.
16. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.
17. On August 15, 1995, EPA approved the State of Ohio’s operating permit program (OAC Rule 3745-77) with an effective date of October 1, 1995. See 60 Fed. Reg. 42045 (August 15, 1995).
18. Section 503 of the Act, 42 U.S.C. § 7661b, and 40 C.F.R. §§ 70.5(a) and (c) and 70.6, set forth the requirement to submit a timely, accurate, and complete application for a permit, including information to be submitted with the application. See also OAC Rule 3745-77-04 and 3745-77-05.

Factual Background

19. Sunny Farms owns and operates a municipal solid waste and construction and demolition debris landfill at 12500 West County Road 18, Fostoria, Seneca County, Ohio (the facility). The facility includes several emission sources, including flares and fugitive gases emitted from the landfill.
20. At all times relevant to this NOV/FOV, Seneca County has been designated attainment/unclassifiable for the 1971 sulfur dioxide (SO₂) NAAQS. Effective April 9, 2018, Seneca County was designated attainment/unclassifiable for the 2010 SO₂ NAAQS. *See* 83 Fed. Reg. 1098.
21. Sunny Farms is a major source under the federally-approved Ohio SIP because it emits more than 250 tons per year of SO₂, which is a regulated NSR pollutant.
22. In 2010, Sunny Farms began operating a gas collection and control system (GCCS) to control odors generated by the landfill. The GCCS consists of a system of landfill gas (LFG) collectors that direct the LFG to a flare for combustion.
23. In February 2011, Sunny Farms applied to OEPA for a permit-to-install (PTI) to allow expansion of the existing landfill into a parcel of land to the south, referred to as the “southern unit.” The permit application represented that the projected SO₂ emissions from the GCCS flare, which would collect and combust LFG from both the existing northern unit and the proposed southern unit, would be 230.83 tons per rolling 12-month period.
24. On January 19, 2012, OEPA issued a PTI (permit P0107591) for the expansion of the landfill into the southern unit to increase the capacity of the landfill and the use of a GCCS to control LFG-related odors. This permit applied to the entire landfill and established a federally enforceable SO₂ emission limit for landfill flare emissions of 230.83 tons per rolling 12-month period.
25. Sunny Farms continued expanding the GCCS to control odors as the existing landfill increased in size.
26. In 2013, Sunny Farms began actual construction of the landfill’s southern unit expansion authorized by the January 19, 2012 PTI, and began accepting and placing waste within the expanded portion on November 18, 2013.
27. On February 7, 2014, Sunny Farms applied to OEPA for a modification to the January 19, 2012 PTI to allow additional SO₂ emissions from the GCCS flare. Sunny Farms requested an SO₂ emission limit increase from 230.83 tons per rolling 12-month period to 479.0 tons per rolling 12-month period. Sunny Farms represented that the emissions increase was due to a method of operation change at the LFG GCCS permitted by the 2012 PTI. Sunny Farms represented in the permit application that PSD was not applicable to the increase in emissions.

28. On April 23, 2014, OEPA issued a modification to the January 19, 2012 PTI to increase LFG collection and operation of controls to reduce odors (permit P0116255). This permit modification applied to the entire landfill and established a new federally enforceable SO₂ emission limit of 479.0 tons per rolling 12-month period.
29. Sunny Farms has not applied BACT to control emissions of SO₂ from the landfill gas flares.
30. On November 18, 2015, Sunny Farms began operation of the GCCS in the landfill's southern unit.
31. Sunny Farms did not submit a permit application or amend a permit application under Title V of the Act for the landfill expansion project that contained all applicable requirements, including various requirements related to PSD.
32. On March 17, 2017, EPA issued an information request to Sunny Farms pursuant to Section 114 of the Act, 42 U.S.C. § 7414.
33. Sunny Farms provided a response to the information request on June 9, 2017.

Violations

PSD Requirements (Ohio SIP)

34. The April 23, 2014 PTI authorized an increase in the allowable SO₂ emissions from those authorized by the January 19, 2012 PTI. As a result, Sunny Farms became a "major stationary source," and the PSD requirements of the Ohio SIP applied to Sunny Farms as though construction had not yet commenced. Sunny Farms was therefore required to become permitted as a new major stationary source in accordance with OAC Rules 3745-31-10 to 3745-31-27 and 3745-31-30 to 3745-31-32, as required by the Ohio SIP at OAC Rule 3745-31-05(D)(5).
35. Sunny Farms' failure to submit to OEPA the air quality impact(s) for the landfill expansion project is a violation of the Ohio SIP at OAC Rule 3745-31-12(C)(4).
36. Sunny Farms' failure to apply BACT to control emissions of SO₂ from the landfill flares prior to commencement of operation after the construction of a new major stationary source is a violation of the Ohio SIP at OAC Rule 3745-31-15(C).
37. Sunny Farms violated and continues to violate the Ohio SIP at OAC Rule 3745-31-13(A) by failing to obtain a PTI that meets the requirements of Ohio SIP Rules at OAC 3745-31-01 through 3745-31-20 for constructing a major stationary source.

Title V Permit

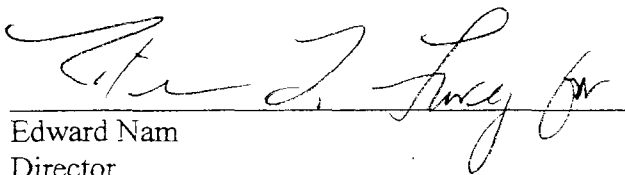
38. Sunny Farms is in violation of the Title V permitting requirements at Section 503 of the Act and 40 C.F.R. Part 70 because it has failed and continues to fail to submit a timely and complete application for a Title V operating permit for the landfill operations that: (i) identifies all applicable requirements including, but not limited to, the requirement to apply, install, and operate BACT for SO₂; (ii) accurately certifies compliance with such requirements; and (iii) contains a compliance plan for all applicable requirements for which it is not in compliance.

Environmental Impact of Violations

39. The violations above have caused or may cause excess emissions of SO₂. Current scientific evidence links short-term exposures to SO₂ ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms.

Date

5/29/18


Edward Nam
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I certify that I sent a Notice and Finding of Violation, No. EPA-5-18-OH-09, by Certified Mail, Return Receipt Requested, to:

Sunny Farms Landfill, LLC
c/o CT Corporation System
4400 Easton Commons Way Suite 125
Columbus, Ohio 43219

I also certify that I sent a copy of the Notice and Finding of Violation by e-mail or first-class mail to:

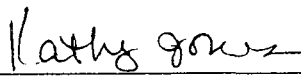
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Shane A. Farolino, Esq.
Roetzel & Andress
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Akron, OH 44308

On the 31st day of May 2018



Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7017 6660 0000 3661 7345